



Docket No.: C1039.70079US00
(PATENT)

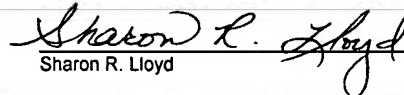
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Arthur M. Krieg
Serial No.: 10/627,413
Confirmation No.: 3204
Filed: July 25, 2003
For: METHODS FOR TREATING AND PREVENTING INFECTIOUS
DISEASE
Examiner: Le, Emily M.
Art Unit: 1648

Certificate of Mailing Under 37 CFR 1.8(a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: March 30, 2007


Sharon R. Lloyd

PETITION UNDER 37 C.F.R. § 1.181 AND §1.182

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The information disclosure statement filed by Applicant has been objected to under 37 CFR 1.56(b) and not considered. The Examiner has quoted CFR 1.56 (b) and then concluded that the information provided in the 46 references that she did review “do not compel a conclusion that a claim is unpatentable.” Accordingly, she concluded that “the submission is not in compliance with 37 CFR 1.56 and 1.98.”

Applicants assert that they have complied with their duty of disclosure as outlined in the MPEP §609 and §2001- 2004 and in compliance with 35 C.F.R. §1.56, §1.97 and §1.98. Applicants present a clean copy of the IDS previously submitted for review by the Examiner (omitting those references that have already been considered) with a Petition for review of these references under 37 C.F.R. §1.181 and §1.182. The clean copy is updated with the format requirements now in place

under 37 CFR 1.98(a)(1). Applicants request that these references be reviewed by the Examiner and be granted the date of submission of the original filed IDS.

Applicant's strongly disagree with the Examiner's refusal to consider the IDS. Initially, Applicants point out that they are in agreement that the references "do not compel a conclusion that a claim is unpatentable." If Applicants had information that compelled a conclusion that a claim was unpatentable, Applicants would not pursue such a claim.

The position taken by the Examiner in refusing to review the references set forth in the IDS is inconsistent with the Patent Office policy of requesting information. For instance, "once the minimum requirements of 37 CFR 1.97 and 37 CFR 1.98 are met, the examiner has an obligation to consider the information." (MPEP 609, emphasis added). Additionally, the Patent Office recognizes, and through that recognition, appears to sanction that Applicants will be submitting information that is related to the invention but that does not compel a prima facie case of unpatentability. According to MPEP 2001.05 "if information is not material, there is no duty to disclose the information to the Office. Thus, it is theoretically possible for applicants to draft claims and a specification to avoid a *prima facie* case of obviousness over a reference and then to be able to withhold the reference from the examiner. *The office believes that most applicants will wish to submit the information, however, even though they may not be required to do so, to strengthen the patent and avoid the risks of an incorrect judgment on their part on materiality or that it may be held that there was an intent to deceive the Office.*" (MPEP 2001.05, emphasis added).

Each of the references cited in the IDS submitted on January 14, 2004 was previously cited to the Patent Office in a prior application relied upon for an earlier filing date under 35 USC 120. Such information is indicated at the end of the Form 1449. According to MPEP2006.06(b) if "the application under examination is identified as a continuation, divisional, or continuation-in-part of an earlier application, the examiner will consider the prior art cited in the earlier application. See MPEP 609. The examiner must indicate in the first Office action whether the prior art in a related application has been reviewed. Accordingly, no separate citation of the same prior art need be made in the later application." (MPEP 2001.06(b)). "The examiner will consider information which has been considered by the Office in a parent application when examining: (A) a continuation application filed under 37 CFR 1.53(b), (B) a divisional application filed under 37 CFR 1.53(b), or

(C) a continuation-in-part application filed under 37 CFR 1.53(b). A listing of the information need not be resubmitted in the continuing application unless the applicant desires the information to be printed on the patent.” (MPEP 609.02(A)(2)) In this case, Applicant desires to have it printed on the front page of the patent. Additionally, as stated above, Applicants have submitted herewith a clean copy of the 1449 which is updated with the format requirements now in place under 37 CFR 1.98(a)(1).


Of the 46 US Patent and PreGrant Patent documents listed on the IDS and mentioned by the Examiner as being reviewed and considered to have a “low percentage... material to patentability”, 16 are other patents/applications belonging to the same applicant or assignee. According to MPEP 2004 (9) applicants should bring such patents/applications to the attention of the Examiner. “Do not rely on the examiner of a particular application to be aware of other applications belonging to the same applicant or assignee. It is desirable to call such applications to the attention of the examiner even if there is only a question that they might be ‘material to patentability’ of the application the examiner is considering.” (MPEP 2004 (9)).

It is unclear from the rejection which section of 37 CFR 1.56, 1.97, and 1.98 with which Applicants’ IDS fails to comply. “multiple information disclosure statements may be filed in a single application, and they will be considered, provided each is in compliance with the appropriate requirements of 37 CFR 1.97 and 37 CFR 1.98.” (MPEP 609). Thus, Applicants request that the cited references be reviewed by the Examiner and be granted the date of submission of the original filed IDS.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 23/2825, under Docket No. C1039.70070US00. A duplicate copy of this paper is enclosed.

Dated: March 30, 2007

Respectfully submitted,

By 

Helen C. Lockhart

Registration No.: 39,248

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Docket No. C1039.70079US00

FORM PTO-1449/A and B (Modified)

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

APPLICATION NO.: 10/627,413

ATTY. DOCKET NO.: C1039.70079US00

FILING DATE: July 25, 2003

CONFIRMATION NO.: 3204

APPLICANT: Arthur M. Krieg, et al.

GROUP ART UNIT: 1648

EXAMINER: Le, Emily M.

Sheet 1 of 10

U.S. PATENT DOCUMENTS

Examiner's Initials	Cite No.	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication or of issue of Cited Document MM-DD-YYYY
		Number	Kind Code		
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FORM PTO-1449/A and B (Modified) INFORMATION DISCLOSURE STATEMENT BY APPLICANT				APPLICATION NO.: 10/627,413		ATTY. DOCKET NO.: C1039.70079US00	
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